



BOARD OF APPEALS
Diane R. Gordon, Co-Chair
Harry Miller, Co-Chair
Bailey S. Silbert

Town of Brookline

Massachusetts

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Patrick J. Ward, Secretary

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. BOA 070009

Petitioner, David C. Khoury, applied to the Board of Appeals for relief to expand the 1st floor commercial space and construct a 2nd and 3rd floor addition for five residential units at his property at 224,226 and 228 Cypress Street.

On July 19, 2007 the Board of Appeals met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed August 16, 2007 at 7:30 p.m. in Hunneman Hall, Main Library, as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioners, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published July 26 and August 2, 2007 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEALS
NOTICE OF HEARING

Pursuant to M.G.L., C.39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **KHOURY, DAVID C**

Location of Premises: **224 CYPRESS ST BRKL**

Date of Hearing: **08/16/2007**

Time of Hearing: **07:30 p.m.**

Place of Hearing: **Main Library, Hunneman Hall, 2nd fl.**

A public hearing will be held for a special permit and/or variance from:

- 1) **Section 5.07; Dwellings in Business and Industrial Districts; Special Permit**
- 2) **Section 5.43; Exceptions to Yard and Setback Regulations; Special Permit**
- 3) **Section 5.50; Front Yard Requirements; Variance Required**
- 4) **Section 5.52; Fences and Terraces in Front Yards; Variance Required**
- 5) **Section 5.60; Side Yard Requirements; Variance Required**
- 6) **Section 6.02.1; Table of Off-Street Parking Requirements; Special Permit**
- 7) **Section 6.02.1.b; Off Street Parking Space Regulations; Special Permit**
- 8) **Section 8.02.2; Alteration or Extension; Special Permit Required**

Of the Zoning By-Law to construct an addition to the existing commercial spaces and to construct an addition for five (5) new residential dwelling units and to construct an outdoor parking lot for eleven vehicles with access from Wellington Terrace per plans at **224 CYPRESS ST BRKL**.

Said Premise located in a **L-1.0** District.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

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Present at the hearing was Chair, Lawrence Kaplan, and Board members Diane Gordon and Harry Miller. Prior to the hearing, each of the Board members has personally visited the site and the surrounding neighborhood. The case for the petitioner was presented by Attorney Jacob Walters of Goldenberg, Walters and Popkewitz of 7 Harvard Street, Brookline, MA 02445. Mr. Walters

explained to the Board what the petitioner's project entailed, including that the existing commercial building would be renovated and enlarged by about 1,200 square feet, and that five new dwelling units would be constructed as an addition to the existing commercial building. He also described how the commercial space and the residential space, including the ten parking spaces which would serve the residences, would be accessed. Mr. Walters then went on to detail the zoning relief required for the project.

Tom Dolle, the architect for the project spoke next, and he noted, among other things, that the residential units would be about a five minute walk from public transportation, that the proposed heights will be in line with other buildings in the area, that the total footprint would occupy about 40% of the lot, that the design of the project would blend well with neighboring properties, and that "Green Design Principals" for the project would be pursued.

Brian Beisel, another consultant for the petitioner, performed a parking survey of the general area where the property is located, and he explained the results of that survey. Mr. Beisel concluded his remarks by stating that the project would not create a parking issue in the neighborhood.

Blair Hines, the petitioner's landscape architect, then spoke and described the various landscape designs and elements proposed for the project.

Mr. Beisel then spoke again briefly about traffic patterns and volumes in the area, followed again by Mr. Walters who explained that construction vehicles would access the site via Wellington Terrace, that police details would be used and paid for by the petitioner to mitigate all potential traffic impacts during construction, and that the petitioner would contribute his fair share towards the maintenance of Wellington Terrace if the project was approved.

The Board was made aware that former Brookline Fire Chief Green had written a letter stating that Fire Department access to the proposed new residences was unsatisfactory. Kurt Ruchala of FIREPRO, another of the petitioner's consultants, took issue with Chief Green's letter and pointed out that all Fire Department Access Regulations for the project will be met. The Board notes that, subsequent to the August 16, 2007 public hearing, the new Brookline Fire Chief stated that there would be adequate fire access, so this potential issue was resolved.

A number of persons then spoke in favor of the project, including Frank McCone, Scott Kinlay, Neil Wishinsky, Levon Kurkijan, Barbara Tynan, Peter Hoss, Robert Goodall and Fred Edwards. The general theme of those speaking in favor was that the renovated and expanded commercial space would benefit the community and remove an eyesore, that the petitioner was a good neighbor, and that the design of the project including the residential portion was well conceived.

A number of persons then spoke in opposition to the project, including Jeffrey Allen, an attorney representing a number of Wellington Terrace residents, Linda Hamlin, David Hamlin, Jim Vrabel and Andy Olins. Those in opposition stated, among other things, that Wellington Terrace, which is a very narrow, private way, was being unfairly overburdened by the project, that instead of accessing the ten parking spaces via Wellington Terrace, all parking should be accessed only from Cypress Street, that such overburdening would adversely impact the unique character of the historic district which encompassed the Wellington Terrace neighborhood, that the project should be treated as totally new construction requiring variances that were not applied for, and that they had no opposition to the commercial part of the project.

Following the above testimony, the Board continued the public hearing until September 6, 2007, at which time additional testimony for and against the project was given by Scott Osterweil,

Craig Haller, Treva Krantz, Noel Buckman, Victor Barakat, Doug Johnson, Susan Rothstein, Phyllis O'Leary, Theodore Howe, Ruth Arlene Howe, Robert Martell, Rick VanGortell, Laurie Fox, Arnold Howe and Deborah Fawcett. The themes expressed in August, both pro and con, were reiterated and expanded on by those who spoke at the September meeting.

At the conclusion of the September meeting, Mr. Allen proposed that a Design Advisory Team ("DAT") be formed to see if a project design acceptable to both the petitioner and those in opposition, could be agreed to through negotiation, utilizing the DAT. Thereafter, a DAT was formed consisting of Arjun Mande, Martin Sokoloff and Lee Johnson. The DAT met with all interested persons on October 2, 2007 and October 25, 2007, and minutes of those meetings were provided to the Board.

After continuing the public hearing to give the DAT time to try and broker a settlement on the project, the public hearing was reconvened on November 15, 2007. Prior to that time, a new public notice was published in the Tab and mailed as required by law, adding Section 5.09A (Special Permit for Design Review) as an additional Section requiring zoning relief for the project.

At the November 15th hearing, Mr. Walters presented a revised project design which reduced the number of dwelling units from 5 to 4 and reduced the number of parking spaces from 10 to 8, or in the alternative, to as few as 6. The size of the residential portion of the project was to remain the same, but there would be one less residential unit. He then spoke to the zoning relief which would be required for the project, as revised. He also responded to allegations that the project was all new construction and not a renovation/addition, noting in particular the Architectural Access Board's view that it was the latter. He also stated that the petitioner was committed to working out a construction management plan with the Town and the neighbors, and to repairing any damage caused to Wellington Terrace during construction. He also stated that the petitioner would

commit that there would be no guest or resident parking on Wellington Terrace associated with the project.

The Board then heard from Linda Hamlin, Ruth Arlene Howe, Cruise Scanebria, David Hamlin, Robert Martell, Theodore Howe, Ann Lusk, Laurie Fox and Andy Olins. All of these persons spoke in opposition and reiterated and expanded somewhat on what had been said at the prior public hearings. However, what was emphasized to the Board is that many of the homes on Wellington Terrace have neither garages nor driveways, making parking on Wellington Terrace a necessity (Brookline does not allow overnight parking on its streets), and since the Wellington Terrace neighborhood is in an historic district, permission to create driveways would in all likelihood not be granted by the Town's Preservation Commission. It was also emphasized how narrow Wellington Terrace is, how difficult it is today to navigate over it to get to and from one's house, and how even more difficult and sometimes impossible it is to navigate over it when it has snowed and after it has been plowed by the Town.

The Board then called on Polly Selkoe of the Planning Department who explained why the Planning Board was in opposition to the project, and referred the Board to the Planning Board's comments in its report to this Board. She then read from Section 9.05 of the Town's Zoning By-Laws to demonstrate her and the Planning Board's belief that the project does not meet the grounds for this Board to grant the zoning relief requested for the project.

Frank Hitchcock of the Building Department spoke next on behalf of the Building Commissioner. He first explained the zoning relief required for the project, including the newly exacted amendment to Section 9.05. He also noted that, to the extent the project is deemed all new construction rather than a renovation/addition, variances would be required, but no testimony of meeting the requirements for a variance were presented by the petitioner.

Following Mr. Hitchcock's comments and a brief statement from Mr. Walters, the Board closed the public hearing and began its deliberations. Section 9.05 of the Zoning By-Laws states that the Board of Appeals shall not approve an application for a special permit unless it finds that all of the following conditions are met:

1. The specific site is an appropriate location for the project.

- (a) While the Board is not opposed to a mixed use retail and residential project at the site which is accessed solely from Cypress Street, the adverse impacts that the project, as proposed, will have on an already overburdened and narrow Wellington Terrace, where on-street parking by necessity is the rule rather than the exception, make the specific site an inappropriate location for the residential portion of the project.

2. The use as developed will not adversely affect the neighborhood.

- (a) The necessity of the occupants of the residential unit and their invitees and guests to access the residences via Wellington Terrace will adversely affect the neighborhood in a material way due to the inability of an already overburdened and narrow Wellington Terrace to support the additional use thereof required for the residential portion of the project.

3. There will be no nuisance or serious hazard to vehicles or pedestrians.

- (a) Adding the additional traffic and on-street parking (that will undoubtedly occur) on Wellington Terrace as a result of the residential portion of the project will undoubtedly create both a nuisance and serious hazard to vehicles and pedestrians due to the narrowness and current overburdening of Wellington Terrace.

4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

- (a) Wellington Terrace is, in the Board's view, not adequate to support the use by the residential portion of the project.

5. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.


- (a) The project satisfies this requirement.

Chapter 40A also requires that for this Board to grant a special permit, the proposed use must be in harmony with the general purpose and intent of the Zoning by-laws. That purpose and

intent include protecting the safety and general welfare of Town's future inhabitants. It is the view of the Board that the project fails to satisfy this requirement for the reasons discussed above.

Based upon all of the foregoing, including, without limitation, the current situation with respect to the condition, use and adequacy of Wellington Terrace, and the fact that the Wellington Terrace neighborhood is in an historic district where on-street parking is and will likely continue to be a necessity (based upon evidence presented at the public hearings, there being no evidence having been presented to the contrary), the Board denies all zoning relief requested for the project. To the extent that the project requires any variances, those are denied as well, because no testimony was given as to what those variances are or how the project meets the statutory requirements for this Board to grant any such variances.

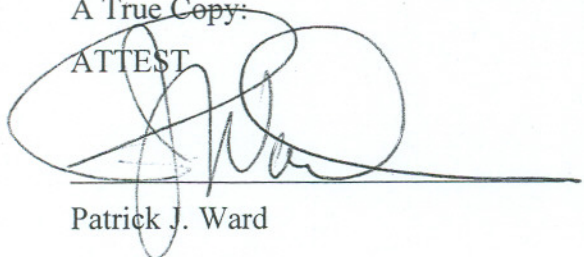
Unanimous Decision of
The Board of Appeals


Lawrence E. Kaplan
December 6, 2007

Filing Date: December 11, 2007

A True Copy:

ATTEST


Patrick J. Ward
Clerk, Board of Appeals

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